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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDER JOHN YOUNG, JR.,

Defendant and Appellant.

A128139

(Solano County  
Super. Ct. No. FCR257954)

Defendant appeals from orders of the trial court revoking his probation and sentencing him to four years in state prison for his December 2008 conviction of corporal injury on a spouse. His counsel has asked this court for an independent review of the record to determine whether there are any arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436.) Because defendant did not request a certificate of probable cause, our examination of the record is limited to matters occurring after the plea was entered, i.e., the revocation of probation and the imposition of sentence. Defendant was notified of his right to file a supplemental brief, but has not done so. Upon independent review of the record, we conclude that no arguable issues are presented for review, and affirm the judgment.

**Factual and Procedural History**

On December 8, 2008, defendant pled no contest to one count of corporal injury on a spouse (Pen. Code, § 273.5). Defendant agreed as a factual basis for his plea that he assaulted his wife during an argument and that he “appeared to have been drinking” at the time. The probation report indicated that defendant has a significant substance abuse

problem and that despite his purported willingness to participate in a treatment program, since 2002 he had been terminated from two substance abuse treatment programs. The court suspended imposition of sentence and placed defendant on probation. The terms of his probation required, among other things, that he abstain from the use of alcohol. Defendant was warned the court would have “zero tolerance” for any violation of the terms of his probation.

On December 21, 2009, the prosecution filed a request for revocation of probation. A contested revocation hearing was held on February 23, 2010. A police officer testified that he was dispatched to a grocery store based on a report that defendant was causing a disturbance inside the store. When the officer approached defendant, he appeared intoxicated. The officer smelled alcohol on defendant’s breath. He noticed that defendant’s eyes were red and watery, his gait was unsteady and he had slightly slurred speech. Defendant was arrested for public intoxication and transported to county jail. Defendant denied that he was intoxicated at the time of his arrest. He claimed that he smelled like alcohol because he had been drinking nonalcoholic beer and that his unsteady gait was the result of an old injury. The trial court found defendant in violation of his probation based on his failure to abstain from the use of alcohol and revoked his probation.

On March 22, defendant was sentenced to the upper term of four years for his prior conviction. In selecting the upper term, the court relied on, among other things, defendant’s extensive criminal history, a prior prison term, the fact that he was on probation at the time of the offense and his prior poor performance on probation and parole. Defendant filed a timely notice of appeal.

### **Discussion**

Substantial evidence supports the finding that defendant violated his probation. (See *People v. Kurey* (2001) 88 Cal.App.4th 840, 848-849.) In light of defendant’s criminal history and substantial history of alcohol abuse, the court did not abuse its discretion in finding that continued probation was not appropriate. (See *People v. Downey* (2000) 82 Cal.App.4th 899, 909-910.) Nor did the court abuse its discretion by

imposing the upper term sentence. (See *People v. Avalos* (1996) 47 Cal.App.4th 1569, 1582.) Defendant was adequately represented by counsel throughout the proceedings.

**Disposition**

The judgment is affirmed.

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Pollak, Acting P. J.

We concur:

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Siggins, J.

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Jenkins, J.